IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.751 of 2007
To
FIRST APPEAL No.756 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge ?

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SPECIAL LAQ OFFICER & ANR. - Appellants
Versus
ZALA SURUBHA GANUBHA & ORS. - Respondents

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Appearance :
MS TANUJA N KACHCHHI, AGP for Appellants.
MR GM AMIN for Original Claimants.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 13/02/2007

ORAL JUDGMENT

(Per : HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. ***Admitted***. Mr.G.M.Amin, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal.

Having regard to the facts of the case as well as in view of the joint request made by the learned counsels for the parties, the appeals are taken up for final disposal today.

2. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 ("The Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the legality of common judgment and award dated July 30, 2005 rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (Rural) at Navrangpura in Land Acquisition Case No.305 of 1999 to Land Acquisition Case No.310 of 1999 by which the claimants are awarded additional compensation at the rate of Rs.35.90 paise per sq. mt., over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.09 paise per sq.mt. vide his award dated February 20, 1999, for their acquired lands.

3. A proposal was received by the State Government to acquire the lands of village Mota Tradia, Taluka Dhandhuka, District Ahmedabad, for the public purpose of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that the lands of village Mota Tradia were likely to be needed for the said public purpose. Therefore, a Notification under Section 4 of the Act was issued, which was published in the Official Gazette on March 14, 1997. The landowners were served with notices as required under Section 4(1) of the Act. They objected to the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5-A(2) of the

Act to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Mota Tradia, which were specified in the Notification published under Section 4(1) of the Act in the Official Gazette on March 14, 1997 were needed for public purpose of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on December 16, 1997. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated February 20, 1999 offered compensation to the claimants at the rate of Rs.1.09 paise per sq.mt. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of just amount of compensation payable to them. Accordingly references were made to the District Court, Ahmedabad (Rural), where they were numbered as Land Acquisition Case No.305 of 1999 to Land Acquisition Case No.310 of 1999.

4. On behalf of the claimants witness Ajitsinh Dolatsinh was examined at Exhibit 21. Over and above stating that the lands acquired were fertile and that each claimant was earning an income of Rs.60,000/- per year per *vigha* by sale of agricultural produces, the witness produced previous award of Reference Court relating to the

lands of adjoining village Nana Tradia at Exh.15 in support of the claim for enhanced compensation. He also produced copy of Village Form No.7+12 at Exhs. 16 to 19 and DLR Map of village Mota Tradia at Exh.20. No witness was examined on behalf of the acquiring authorities.

5. On appreciation of evidence adduced by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village Nana Tradia furnished a good guidance for the purpose of determining the market value of the lands acquired from village Mota Tradia. The Reference Court further noticed that the claimants, whose lands were acquired from village Nana Tradia, were granted compensation by the Reference Court at the rate of Rs.32.20 paise per sq.mt. and as there was time gap of about fifteen months in the publications of Notifications under Section 4(1) of the Act in the two cases, the claimants were entitled to 10% rise per year in the price of the land. In the ultimate analysis, the Reference Court has awarded additional compensation to the claimants at the rate of Rs.35.90 paise per sq.mt. by the impugned judgment and award giving rise to the above numbered appeals.

6. This Court has heard Ms.Tanuja N. Kachchhi, learned Assistant Government Pleader for the appellants and Mr.G.M. Amin, learned counsel for the claimants. This court has also considered the paper book produced by the learned counsel for the claimants for perusal of the Court. It contains oral as well as documentary evidence adduced by the claimants before the Reference Court.

7. Though it was claimed by the witness for the claimants that each claimant was earning a sum of Rs.60,000/- per year per *vigha* from the sale of agricultural produces, no reliable evidence could be adduced by the claimants to substantiate the said claim nor the claimants have claimed compensation on the basis of yield. What was relied upon by the claimants was a previous award of the Reference Court relating to the lands of village Nana Tradia. The previous award of the Reference Court relating to village Nana Tradia produced at Exh.15 indicates that the lands of village Nana Tradia were acquired for the public purpose of Narmada Project pursuant to publication of Notification under Section 4(1) of the Act in the Official Gazette on September 6, 1995. Therein the Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.0.90 paise per sq.mt. Feeling aggrieved, the references were sought and the Reference Court awarded additional compensation to the claimants at the rate of Rs.31.60 paise per sq.mt. in Land Acquisition Case No.561 of 1999 and cognate matters decided on November 24, 2003. The learned counsel for the claimants has produced a copy of judgment dated June 26, 2006 rendered in First Appeal Nos.1847 of 2006 and cognate matters. It indicates that the award of the Reference Court rendered in Land Acquisition Case No.561 of 1999 and cognate matters relating to the lands of village Nana Tradia was subjected to challenge in the above numbered appeals. The Division Bench of this Court by judgment dated June 26, 2006 reduced the compensation payable to the claimants to Rs.22.50 paise Per sq.mt. Witness Ajitsinh Dolatsang whose testimony is recorded at Exh.21 has clearly asserted that the

boundary of village Nana Tradia touches the boundary of village Mota Tradia and that the lands which were acquired from Nana Tradia were similar in all respect including fertility to the lands acquired in the instant case. What is mentioned by the said witness is that the lands which were acquired from village Nana Tradia were even and the claimants in the said case were able to raise same crops as were being raised on the lands acquired in the instant case. Though this witness has been cross-examined at length on behalf of the acquiring authority, the assertion made by the witness could not be demonstrated to be untrue. Under the circumstances, this court is of the opinion that the Reference Court in the instant case was justified in placing reliance on the previous award of the Reference Court relating to the lands of village Nana Tradia for the purpose of determining market value of the lands acquired in the instant case. However, on the basis of previous award relating to the lands of village Nana Tradia, as modified by the High Court in First Appeal No.1847 of 2006 and cognate matters, the claimants in the instant cases, would be entitled to compensation at the rate of Rs.22.50 paise per sq.mt. The record would show that there is a time gap of about 15 months between the Notifications which were published under Section 4(1) of the Act acquiring the lands of village Nana Tradia and the lands acquired in the instant case. The learned counsel for the parties have agreed that the claimants would be entitled to reasonable rise in price of the lands acquired in the instant case and that on the basis of such calculation, the claimants would be entitled to get compensation in all at the rate of Rs.25/- per sq.mt. Under the circumstances, the appeals will have to be allowed in part.

8. For the foregoing reasons, the appeals partly succeed. The common judgment and award dated July 30, 2005 rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (R) at Navrangpura in Land Acquisition Case No.305 of 1999 to Land Acquisition Case No.310 of 1999 awarding compensation at the rate of Rs.36.99 paise per sq.mt. to the claimants for their acquired lands is hereby modified and it is held that the claimants would be entitled to compensation in all at the rate of Rs.25/- per sq.mt. The other directions contained in the said award are not interfered with and are hereby upheld. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs.

The Registry is directed to draw the decree in terms of this judgment as early as possible.

(J.M.Panchal, J)

(Smt.Abhilasha Kumari, J)